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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

vs.

GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

**DEFENDANT GOOGLE LLC'S
ADMINISTRATIVE MOTION TO SEAL
JOINT SUBMISSION RE GOOGLE'S
REQUEST TO DELETE CERTAIN PRE-
CLASS PERIOD DATA**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the Parties’ Joint Submission re Google’s Request to Delete Certain Pre-Class Period Data (“Joint Submission”), which contains non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed, including details related to Google’s internal operations related to internal logs, internal log names, their functionalities and retention periods, which Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. This information is highly confidential and should be protected.

This administrative motion pertains to the following information contained in the Joint Submission:

Document	Portions to be Filed Under Seal	Sealing Basis
Joint Submission re Google’s Request to Delete Certain Pre-Class Period Data	Highlighted Portions at: Pages 1:5, 1:7, 1:9-12, 1:26-28, 2:26-28, 3:2, 3:7, 3:11, 3:19, 3:22-23, 4:14, 4:16-17, 4:21-23, 4:27, 5:2-3, 5:5, 5:6-8, cover letter line 11	The information requested to be sealed also contains Google’s highly confidential and proprietary information regarding highly sensitive features of Google’s internal systems and operations, including internal operations related to internal logs, internal log names, their functionalities and retention periods, that Google maintains as confidential in the ordinary course of its business and is not generally known to the public or Google’s competitors. Such confidential and proprietary information reveals Google’s internal strategies, system designs, and business practices for operating and maintaining many of its important services, and falls within the protected scope of the Protective Order entered in this action. <i>See</i> Dkt. 81 at 2-3. Public disclosure of such confidential and proprietary information could affect Google’s competitive standing as competitors may alter their systems and practices relating to competing products. It may also place Google at an increased risk of cybersecurity threats, as third parties may seek to use the information to compromise Google’s internal practices relating to competing products.

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily meet the higher “compelling reasons” standard, the Court need only consider whether these materials meet the lower “good cause” standard.

III. THE ABOVE IDENTIFIED MATERIALS EASILY MEET THE “GOOD CAUSE” STANDARD AND SHOULD ALL BE SEALED

Courts have repeatedly found it appropriate to seal documents that contain “business information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc'ns, Inc.*,

1 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 2 “contain[] confidential information about the operation of [the party’s] products and that public
 3 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of*
 4 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 5 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 6 standard. *See, e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 7 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 8 standard where that information could be used to the company’s competitive disadvantage”) (citation omitted). Courts in this district have also determined that motions to seal may be granted
 9 as to potential trade secrets. *See, e.g., United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 10 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 11 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

13 Here, the Joint Submission comprises confidential and proprietary information regarding
 14 Google’s products and systems that Google does not share publicly. Specifically, this information
 15 provides details related to Google’s internal operations related to internal logs, internal log names,
 16 their functionalities and retention periods, which Google maintains as confidential in the ordinary
 17 course of its business and is not generally known to the public or Google’s competitors. Such highly
 18 confidential information reveals Google’s internal operations regarding various important products.

19 Public disclosure of the above-listed information would harm Google’s competitive standing
 20 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 21 Google’s proprietary projects to Google’s competitors. That alone is a proper basis to seal such
 22 information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-BLF, Dkt. No.
 23 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive business
 24 information related to Google’s processes and policies to ensure the integrity and security of a
 25 different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
 26 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
 27 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*

1 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to
2 seal as to “internal research results that disclose statistical coding that is not publicly available”).

3 Moreover, public disclosure of such highly confidential information could affect Google’s
4 competitive standing as competitors may alter their system designs and practices relating to
5 competing products, time strategic litigation, or otherwise unfairly compete with Google. It may
6 also place Google at an increased risk of cyber security threats, as third parties may seek to use the
7 information to compromise Google’s internal operations or projects. *See, e.g., In re Google Inc.*
8 *Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing]
9 how users’ interactions with the Gmail system affects how messages are transmitted” because if
10 made public, it “could lead to a breach in the security of the Gmail system”). The security threat is
11 an additional reason for this Court to seal the identified information.

12 The information Google seeks to redact is the minimal amount of information needed to
13 protect its internal systems and operations from being exposed to not only its competitors but also
14 to nefarious actors who may improperly seek access to and disrupt these systems and operations or
15 time strategic litigation. The “good cause” rather than the “compelling reasons” standard should
16 apply but under either standard, Google’s sealing request is warranted.

17 **IV. CONCLUSION**

18 For the foregoing reasons, the Court should seal the identified portions of the parties’ Joint
19 Submission.

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